REMARKS

Claims 1-25 were examined in the January 29, 2008 Final Office Action and rejected as obvious over U.S. Patent No. 6,049,784 to *Rosen* in view of U.S. No. Patent 7,089,206 to *Martin*. Reconsideration of the rejection is respectfully requested in view of the remarks which follow.

A.   <u>The Combination of *Rosen* in View of *Martin* Fails to Teach or Suggest all of the Limitations of Claims 1-25.</u>

The obviousness rejection of claim 1-25 over U.S. Patent No. 6,049,784 to *Rosen* in view of U.S. Patent No. 7,089,206 to *Martin* is respectfully traversed.

    1.   <u>Claims 1-12, 16-18 and 23</u>

The Office Action admits that *Rosen* fails to explicitly teach the following features recited in claim 1:

> a risk allocation value (RAV) component coupled to the messaging bus and having an interface for receiving validated order messages from the validator, wherein the RAV component implements processes for evaluating risk associated with an order should that order be completed and preventing completion on an order in response to the RAV component identifying an unacceptable position;

Not only does *Rosen* fail to explicitly teach the above features, *Rosen* fail to inherently teach these claimed features. The legal standard for inherency takes into consideration that even when a prior art reference which does not explicitly disclose an aspect of a claimed invention may nevertheless serve to render that claim unpatentable if the element is inherent therein, *see, e.g. Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264 (Fed.Cir.1991). Inherency <u>requires</u> that the "structure in the prior art <u>necessarily</u> functions in accordance with the limitations of a ... claim of an application." *In re King*, 801 F.2d 1324, 1326 (Fed.Cir.1986) (emphasis added).

There are no teachings in *Rosen* wherein a RAV component implements processes for evaluating risk should an order be completed and preventing completion on an order in response to the RAV component identifying an unacceptable position. In contrast, problematic orders are flagged for individual, manual treatment. According, *Rosen* cannot be said to expressly or inherently teach these claimed features of claim 1.

Martin also fails to teach or suggest these claimed features. The text at col. 13, lines 34-40 of *Martin* relied upon in the Office Action only teaches how a shares being traded are allocated (subject to rounding according to minimum lot size) among different portfolios, each portfolio having predetermined risk class limits. This is matching function, which is not what is claimed. The reference in the Office Action to *Martin* col. 22, lines 14-44, merely encompasses *Martin*'s claim 19 reciting the matching technique—allocation of a group of shares of stock among a plurality of portfolios each having previously assigned risk classes. Nowhere does *Martin* teach, either expressly or inherently, "preventing completion on an order in response to the RAV component identifying an unacceptable position".

Further, *Martin* also fails to teach that the "risk allocation value (RAV) component . . . . implements processes for evaluating risk associated with an order, should that order be completed". This claimed feature reflects that claim 1 is directed to a "distributed trading system . . . under which a participant will buy and/or sell a futures contract." *Martin* does not have this same need for evaluating risk should an order be completed, as the examples in *Martin* relate to a specified class of financial instruments—shares of stock. The trade allocation system of *Martin* is essentially "a trading system component that can automatically allocate[] a trade of a financial instrument among multiple investment portfolios" which performs as matching function based on the risk class previously assigned to shares of a particular stock and the risk class previously assigned to a portfolio. If the risk class of the stock is acceptable to the risk class of the portfolio, shares from the share lot are allocated to that portfolio. *Martin* contains no teaching and has no motivation to evaluate what would happen if a trade went through when a position is unacceptable. Such an evaluation is beyond the matching function of *Martin*.

More particularly, in *Martin*, a computer system includes a first database that stores data associating securities portfolios with risk classes. *Martin* at col. 1, lines 48-50. A separate order management system sends messages about financial instruments such as shares of stocks grouped as a lot to be traded. The order management system includes information about the size of the trade and risk class identifiers for the shares of stock to be traded. *Martin* at col. 1, lines 52-54. *Martin* then teaches a separate trade allocation system which is

interfaced with the order management system and the portfolio database and allocates shares being traded based on matching risk class criteria and ratios of the total share lot being traded. *Martin* at col. 1, lines 55-60. In *Martin*, assignment of risk classes to the portfolios and assignment of risk classes to the financial instruments being traded are separately performed functions. *Martin* fails to teach that it is these risk allocation processes themselves which implement processing which evaluate risk associated with an order, should that order be completed. Rather, *Martin* teaches that the order management system identifies a share lot available for trade and the allocation system finds portfolios who risk class can accept the available share lots given the risk classes previously assigned to the portfolios. There is no indication that *Martin* is evaluating risk, should an order be completed with an unacceptable risk, as is claimed.

For the above reasons, independent claim 1 is patentably distinguishable over the combination of *Rosen* and *Martin*. Claims 2-12, 16-18 and 23, which incorporate these same distinguishing features through direct and indirect dependence from claim 1, are also non-obvious over the cited referenced.

2. Claims 5 and 6

Claim 5 contains the following requirement:

> the match engine is configured specifically for a particular class of futures contracts and receives validated order messages only when they related to the particular class of futures contracts.

Claim 6 depends from claim 5 and further requires that

> the particular class of futures contracts comprise a contract cluster, and wherein responsive to contract clusters being identified, requiring the match engine to consider two or more contracts simultaneously to determine matches.

Nowhere does either *Rosen* or *Martin* teach a matching engine "configured specifically for a particular class of futures contracts." Nonetheless, with no real basis, at page 4, lines 6-14, of the Office Action, the Examiner has merely typed in the claim langue and inserted a copied list of paragraph references, as follows:

> As per claim 5, Rosen discloses where the match engine is configured specifically for a particular class of futures contracts and receives validated order messages only when they related to the particular class of futures contracts. **(see column 8, para 0065-007 and para 0068-0074 and column 9-13 para 0089-0149).** (emphasis added)

As per claim 6, Rosen discloses wherein the particular class of futures contracts comprise a contract cluster and wherein responsive to contract clusters being identified, requiring the match engine to consider two or more contracts simultaneously to determine matches. **(see column 8, para 0065-007 and para 0068-0074 and column 9-13 para 0089-0149).** (emphasis added)

It was pointed out in the previous Amendment and Response to First Office Action that the Examiner's comments in the Office Action relating to *Rosen* did not follow 37 CFR 1.104(c)(2), which require that when a reference is complex,

. . . . the <u>particular part</u> relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

It was further noted that with respect to *Rosen*, a 156 paragraph and complex reference, **the Examiner had merely inserted the same columns and paragraphs copied after each claim, with the following cite:**

(see column 8 para 0065-0067 and para 0068-0074 and column 9-13 para 0089-0149)

appearing <u>21</u> times in the First Office Action. In the Final Office Action, the Examiner again copies the same reference to 71 paragraphs, this time <u>24</u> times. It is again noted that this wholesale copying without specificity is contrary to the spirit and requirements of 37 CFR 1.104(c)(2).

Furthermore, with respect to claims 5 and 6, all 71 paragraphs of *Rosen* were reviewed for any mention of "contract clusters" or "futures contract". No mention of the term contract was found. The term "cluster" was found in a completely irrelevant context. In view of this complete lack of support for the rejection of claims 5 and 6, claims 5 and 6 are clearly patentable over *Rosen* and *Martin*.

3. <u>Claims 13-15</u>

Claim 13 relates to specifics of futures trading under the present invention and includes the following requirement:

wherein the order request specifies parameters under which a participant will buy and/or sell a futures contract;

As discussed above, the term "futures contract" does not appear anywhere in *Rosen*, despite the Office Action concluding, without any basis (except for the 71 paragraph reference), that "*Rosen* discloses a method . . . under which a participant will buy and/or sell a futures contract".

In addition, the Office Action states that *Rosen* fails to explicitly teach numerous steps of claim 13, including steps relating to unmatched orders and "proposing a settlement price for matched orders based on outside trade data." The Office Action then concludes it would have been obvious to modify the teaching of *Rosen* to undertake these same steps, "as taught by *Martin*". However, *Martin* nowhere teaches "proposing a settlement price". As described in detail above, the cited passages from *Martin* relate to allocation of shares of stock or other security among portfolios. There is no teaching about "proposing a settlement price." The combination of *Rosen* and *Martin* fails to either explicitly or inherently teach this step.

For at least the above reasons, independent claim 13 is non-obvious and patentably distinguishable over the combination of *Rosen* and *Martin*. Claims 14 and 15 are likewise patentable over the combination through dependency.

4.   Claim 15

As was pointed out in the Amendment and Response to First Office Action, with respect to claim 15, all 71 cited paragraphs of *Rosen* were reviewed for any mention of "contract clusters". No mention of contract was found. The term "cluster" was found in a completely irrelevant context.

The Final Office Action never bothered to address this finding and a response to this issue is again requested. In the absence of such a response, it can only be concluded that claim 15 is further patentable over *Rosen*.

5.   Claims 19-22, 24 and 25

The Office Action admits that *Rosen* fails to explicitly teach numerous features recited in independent claim 19 which relates to "parameters under which a participant will buy and/or sell a futures contract". As an initial matter, this language in the preamble of claim 19 provide a particular context under which the method steps of claim 19 are performed. As discussed above, neither *Rosen* nor *Martin* teach futures contract trading.

Moreover, the admitted absence from *Rosen* to teach "a risk allocation value (RAV) component coupled to the messaging bus and having an interface for receiving validated order messages from the validator, wherein the RAV component implements processes for evaluating risk associated with an order

should that order be completed" is not made up for by *Martin*. As discussed above relative to claim 1, *Martin* does not teach the evaluation of risk should an order be completed. *Martin* only teaches matching up orders based on their pre-assigned risk class. If the risk class of shares of a particular stock are not acceptable to a risk class of a portfolio, *Martin* doesn't allocate shares to that portfolio, and does not proceed to further evaluate what would happen should an order be completed.

For at least these reasons, independent claim 19 and dependent claims 20-22, 24 and 25 are patentably distinguishable over *Rosen* in view of *Martin*.
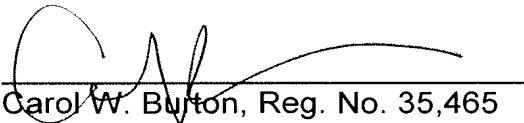
In view of the above, withdrawal of the obviousness rejection of claims 1-25 is proper and respectfully requested.

B.   Conclusion.

Pending claims 1-25 all being in form for allowance, such action is respectfully requested. Should any issues remain, the Examiner is kindly asked to telephone the undersigned.

Please charge Deposit Account No. 50-1123 any fees associated with this filing.

Respectfully submitted,

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